



# UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/749,097	12/30/2003	Dale Murray	364106/0346 SBP/JFD	3175

7590 11/29/2005  
Steven B. Pokotilow  
Stroock & Stroock & Lavan LLP  
180 Maiden Lane  
New York, NY 10038

EXAMINER

SWIATEK, ROBERT P

ART UNIT	PAPER NUMBER
----------	--------------

3643

DATE MAILED: 11/29/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 10/749,097	<b>Applicant(s)</b> MURRAY, DALE	
	<b>Examiner</b> Robert P. Swiatek	<b>Art Unit</b> 3643	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 30 December 2003.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-16 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-16 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

### DETAILED ACTION

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-4, 7, 9-11, 13, 14 are rejected under 35 U.S.C. 102(b) as being anticipated by Pugh (US 5,921,418). The Pugh valve cap includes a nipple insert having a cylindrical body with a curved insertion portion 12, a nipple flange 72, a nipple extension 15, a nipple extension face (unnumbered, but essentially the curved area at the upper extent of element 15 in Figure 1 of Pugh), and a feed hole 16. With regard to claim 7, the Pugh nipple insert is considered to be a single, integral element due to the fact that its several parts fit together into a unitary structure, as shown in Figures 1, 4. As to claim 11, the upper and lower edges of the band 58 of Pugh are considered to constitute indicators that could be employed to ascertain water levels within the bottle. With respect to claim 14, Pugh depicts a cap 20 having a curved side wall 22 and circumferential flange 21, a stopper 32, a nipple insert 10 with a curved insertion portion 12', a nipple flange 14', a nipple extension 15 with a nipple extension face (unnumbered, but shown in Figure 7 as the top, horizontal surface of extension 15), and a feed hole.

Claims 1-7, 9, 10, 12, 13 are rejected under 35 U.S.C. 102(b) as being anticipated by Garhart (US 1,731,816). The Garhart patent discloses a nipple insert including an integral body having a curved insert portion 9, a nipple flange 11, a nipple extension 17 having an extension

Art Unit: 3643

face (unnumbered, but shown in Figure 2 of Garhart as the tapered portion above the extension 17, and a feed hole through the nipple extension and face. Applicant's claim 1 preamble has not been given weight in that the nipple insert of Garhart *could* be inserted into a feed bottle disposed vertically such that animals could access it.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 8 is rejected under 35 U.S.C. 103(a) as being unpatentable over Garhart. Although the Garhart nipple insert is not constructed from stainless steel, it would have been obvious to one skilled in the art to employ stainless steel in its construction in order to improve its durability and minimize damage due to usage.

Claims 15, 16 are rejected under 35 U.S.C. 102(b) as being anticipated by Pugh. The patent to Pugh discloses a method of forming a bottle assembly including providing a cap 20 with a curved side wall 22 and circumferential flange 21, a stopper 32, a nipple insert 10 with a curved insertion portion 12', a nipple flange 14', a nipple extension 15 with a nipple extension face (unnumbered, but shown in Figure 7 as the top, horizontal surface of extension 15), and a feed hole.

Claims 14, 16 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as

Art Unit: 3643

the invention. In claim 14, line 15, and claim 16, line 16, each occurrence of "the sipper tube hole" lacks a prior antecedent basis.

The patents to Stolper (US 5,664,705) and McIntyre et al. (US 6,685,042 B2) have been cited to provide additional examples of feeder bottles.

RPS: 571/272-6894  
17 November 2005

*Robert P. Swiatek*  
**ROBERT P. SWIATEK**  
**PRIMARY EXAMINER**  
**ART UNIT 333 3643**